IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KOCH HEAT TRANSFER COMPANY, LP,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Civil Action No. 12-cv-2446**
	)	
FBS, INC.,	)	
	)	
Defendant.	)	
	)	

PLAINTIFF'S ORIGINAL COMPLAINT

INTRODUCTION

Plaintiff Koch Heat Transfer Company, LP for its Plaintiff's Original Complaint against Defendant FBS, Inc. alleges as follows:

THE PARTIES

1. Koch Heat Transfer Company, LP ("Koch" or "Plaintiff") is a limited partnership organized under the laws of the State of Delaware with its principal place of business at 12602 FM 529 Street, Houston, Texas, 77041.

2. FBS, Inc. ("FBS" or "Defendant") is a corporation organized under the laws of the State of Pennsylvania with its principal place of business at 3340 W. College Avenue, State College, Pennsylvania, 16801.

JURISDICTION AND VENUE

3. The parties are citizens of different states and the amount in controversy, exclusive of interest and costs, exceeds the sum or value specified in 28 U.S.C. § 1332(a). Accordingly, this Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1).

4. This Court has personal jurisdiction over Defendant because the causes of action alleged herein arise from Defendant's conduct of business within this judicial district.

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1), 28 U.S.C. § 1391(c)(2), and 28 U.S.C. § 1391(d) because Defendant is subject to personal jurisdiction in this judicial district.

FACTS GIVING RISE TO THE COMPLAINT

6. Plaintiff is a world-wide leader in the design and manufacture of shell-and-tube heat exchangers that are used in a variety of industrial processes to transfer heat from one fluid stream to another.

7. In shell-and-tube heat exchangers, a tube bundle is housed within a shell and one fluid stream flows through the individual tubes in the tube bundle while another fluid stream flows within the shell outside of the individual tubes. A temperature differential between the fluid streams causes heat to be transferred from the higher temperature fluid stream to the lower temperature fluid stream. Plaintiff provides traditional cylindrical tubes for its shell-and-tube heat exchangers, as well as helically-formed tubes that are used in Plaintiff's Twisted Tube® heat exchangers.

8. Leaks will sometimes develop in the tubes used in shell-and-tube heat exchangers. Inspection systems have been developed to detect abnormalities in traditional cylindrical tubes during routine maintenance of the heat exchanger so that the abnormal tubes may be identified

and repaired or plugged before they cause significant disruptions in the normal operation of the heat exchanger.

9. Because of concerns that inspection systems for traditional cylindrical tubes would not work well with the helically-formed tubes used in Plaintiff's Twisted Tube® heat exchangers, Plaintiff sought to have Defendant develop a system specifically for inspecting Plaintiff’s helically-formed tubes.

10. Plaintiff selected Defendant to develop the inspection system because Defendant represented to Plaintiff that it had special experience and expertise in developing ultrasonic guided wave technology for use in inspecting pipelines to locate defects that might lead to rupture of the pipeline. Defendant also performed initial proof-of-concept work in an effort to demonstrate to Plaintiff that Defendant could adapt that ultrasonic guide wave technology for use in inspecting helically-formed tubes of the type used in Plaintiff’s Twisted Tube® heat exchangers.

11. In reliance on Defendant’s special experience and expertise and initial work efforts, Plaintiff entered into a contract with Defendant under which Defendant was to develop “to a near-market readiness level” an ultrasonic guided wave system for use in inspecting the helically-formed tubes used in Plaintiff’s Twisted Tube® heat exchangers.

12. The terms of the contract included a requirement that Defendant release to Plaintiff the intellectual property pertaining to inspection of Twisted Tube® heat exchangers that resulted from the development efforts of Defendant under the contract.

13. Plaintiff has fully performed its obligations under the contract, including making all of the payments called for under the contract for the development work and the release of the intellectual property.

14. Despite Plaintiff's repeated requests that Defendant perform its obligations under the contract by releasing the intellectual property to Plaintiff, Defendant has refused to do so. In addition, notwithstanding the contractual requirement that Defendant release the intellectual property to Plaintiff, Defendant has asserted it has the right to use the technology developed under the contract to inspect traditional cylindrical tubes in shell-and-tube heat exchangers without providing any compensation to Plaintiff for use of the technology or the intellectual property.

15. In an effort to resolve the contractual dispute, representatives of Plaintiff and Defendant met at the offices of Defendant on January 6, 2012. During that meeting, the parties reached a binding agreement on the final terms of a revised contract, under which the parties would jointly own the intellectual property and both parties would receive compensation for the use of the technology and the intellectual property by third parties.

16. Defendant subsequently repudiated the revised contract by refusing to sign it unless it is modified in several material respects, including by obligating Plaintiff to make additional payments to Defendant in the total amount of $158,000 for further development work on the ultrasonic guided wave inspection system as a condition precedent to Plaintiff's rights under the revised contract to joint ownership of the intellectual property and to receive compensation for third-party use of the technology and intellectual property.

COUNT I – BREACH OF CONTRACT

17. Plaintiff repeats and realleges paragraphs 1-16 above as if fully set forth herein.

18. The revised contract is valid and enforceable and has been breached by Defendant.

19. As a direct, proximate, and foreseeable result of Defendant's breach of contract, Plaintiff has been damaged in an amount to be determined, including at a minimum, in the amounts paid by Plaintiff under the original contract.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

a. That the Court order Defendant to specifically perform under the revised contract and pay damages to Plaintiff in an amount to be determined at trial, plus interest and costs;

b. That, if specific performance is not ordered, the Court order Defendant to repay the sums paid by Plaintiff under the original contract and pay other damages in an amount to be determined at trial, plus interest and costs;

c. Such other and further relief as the Court deems just and proper.

Dated: August 15, 2012.

Respectfully submitted,

By: */s/ Steven N. Williams*

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